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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/06
 LAST UPDATED 1/31/06 HB _____

SPONSOR McSorley

SHORT TITLE Lynn Pierson Compassionate Use Act SB 258/aSF1#1

ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	Total Cost	Recurring or Non-Rec	Fund Affected
Total		94.0	94.0	282.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 Health Policy Commission (HPC)
 Human Services Department (HSD)
 Aging and Long-Term Services Department (ALTSD)
 New Mexico Corrections Department (NMCD)
 Public Education Department (PED)

SUMMARY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

Synopsis of Senate Floor Amendment

Senate Floor amendment #1 to Senate Bill 258 changes the name of the act to the “Lynn and Erin Compassionate Use Act” in honor of Lynn Pierson and Erin Armstrong.

Synopsis of Original Bill

Senate Bill 258 enacts the Lynn Pierson Compassionate Use Act to allow the beneficial use of medical cannabis in a regulated system for treating debilitating medical conditions, including:

- 1) cancer,
- 2) glaucoma,
- 3) multiple sclerosis,
- 4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity,
- 5) epilepsy
- 6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
or
- 7) any other medical condition or disease as approved by the advisory board.

Neither a qualified patient nor the patient's caregiver, shall be subject to arrest or prosecution for the possession of cannabis for medical use by the patient if the quantity of cannabis does not exceed an adequate supply for a period of three-months. A qualified patient is a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received written certification and a registry identification card issued pursuant to the act.

A practitioner (who must be licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act) shall not be penalized for recommending the medical use of cannabis or for providing written certification for such use to qualified patients.

A qualified patient who is under 18 may not possess medical cannabis unless:

- 1) the patient's practitioner has explained the risks and benefits of the medical use of cannabis to the patient and to a parent, guardian or person having legal custody of the patient; and
- 2) a parent, guardian or person having legal custody consents in writing to:
 - a) allow the qualified patient's medical use of cannabis;
 - b) serve as the qualified patient's primary caregiver; and
 - c) control the dosage and the frequency of the medical use of cannabis by the patient.

A licensed producer who has been determined to be qualified to produce, possess, distribute and dispense cannabis pursuant to the Lynn Pierson Compassionate Use Act and is licensed by the Department of Health shall not be subject to arrest, prosecution or penalty, in any manner, for the production, possession, distribution or dispensing of cannabis pursuant to the act.

However, participation in a medical marijuana program does not relieve the qualified patient or primary caregiver from prosecution or liability activities not authorized in the Lynn Pierson Compassionate Use Act, such as:

- operation of a vehicle while under the influence of cannabis; or
- possession or use of cannabis in a school bus or public vehicle; on school grounds or property; in the workplace of the qualified patient's or primary caregiver's employment; or at a public park, recreation center, youth center or other public place.

An advisory board, chosen by the Secretary of Health from a list proposed by the New Mexico Medical Society, shall review and recommend to the Department of Health for approval additional medical conditions for inclusion as debilitating medical conditions under the act; issue recommendations concerning rules to be promulgated for the issuance of the registry identifica-

tion cards; and recommend quantities of cannabis that are necessary to constitute an adequate supply.

No later than October 1, 2006 the Department of Health shall promulgate rules for implementation of the act, and to:

- govern the issuance of registry identification cards for qualified patients and caregivers;
- define the amount of cannabis that constitutes an adequate supply;
- identify criteria for including additional conditions or diseases to the list of debilitating medical conditions;
- identify requirements for licensure of licensed producers and licensed cannabis production facilities; and
- develop a distribution system for medical cannabis.

A temporary provision provides for temporary certification of qualified patients for participation in the program during the period between July 1, 2006 and 30 days after the effective date of rules promulgated by the Department of Health.

FISCAL IMPLICATIONS

The Lynn Pierson Compassionate Use Act does not include an appropriation to the Department of Health (DOH) to staff, develop, and implement the act's provisions. The DOH estimates that costs for the administration of the program would be:

Advisory Board per diem and travel:	\$4,000
Program Manager and Clerk, salary and benefits:	\$80,000
Annual Operating Overhead for 2 staff:	\$10,000
TOTAL ESTIMATED COSTS:	\$94,000

SIGNIFICANT ISSUES

According to a CNN report, "In 1978, a young cancer patient, Lynn Pierson, brought the case for marijuana's medical value to the attention of the New Mexico legislature. After public hearings in which cancer and glaucoma patients and their physicians testified in favor of marijuana as medicine, the legislature overwhelmingly enacted the nation's first law recognizing marijuana's medical value." Pierson died a few months after the bill passed into law. More than 250 patients in New Mexico received marijuana through the Lynn Pierson Therapeutic Research Program run by the University of New Mexico until funding for the program ceased in 1986. The DOH report on the program concluded that, "Results acquired under the State of New Mexico's Controlled Substances Therapeutic Research Act indicate that oral THC and inhaled marijuana are both effective anti-emetics and anti-nauseants."

According to the Department of Health (DOH), severe chronic pain, anorexia, and spasticity cause significant suffering among certain people living with cancer, HIV/AIDS, and neuromuscular diseases, including multiple sclerosis and spinal cord injury. In some instances, the suffering associated with those symptoms cannot be adequately controlled by the use of available prescription medications. Many patients have found that these symptoms are well controlled by the use of medical cannabis, and scientific evidence provides reasonable support for the contention that cannabis can play a therapeutic role in the treatment of these serious medical conditions.

The Aging and Long-Term Services Department (ALTSD) agrees that medical research has established that marijuana is a medically valuable treatment for some conditions because it can alleviate pain, increase appetite and decrease nausea. ALTSD cites the Institute of Medicine's (IOM's) 1999 report which found that the accumulated data indicate a potential therapeutic value for cannabinoid drugs, particularly for symptoms such as pain relief, control of nausea and vomiting, and appetite stimulation. The IOM report also indicates that for patients such as AIDS patients or those patients undergoing chemotherapy and who suffer simultaneously from severe pain, nausea, and appetite loss, medical marijuana may offer broad-spectrum relief not found in any other single medication.

ALTSD cites compelling poll results, including:

- a 2004 poll by the American Association of Retired Persons (AARP) indicating that nearly 75% of older Americans support providing access to medical marijuana; and
- a New Mexico Policy Reform Study conducted in 2001 that found that 81% of New Mexico voters support making medical marijuana available to seriously or terminally ill patients in order to alleviate their pain and suffering from illnesses such as cancer, AIDS, and multiple sclerosis.

According to the Health Policy Commission (HPC) eleven states have legalized medical marijuana use: Alaska, Arizona, California, Colorado, Hawaii, Maine, Nevada, Oregon, Rhode Island, Vermont, and Washington. But the HPC adds that, despite state legalization of medical marijuana the United States Supreme Court ruled 6 to 3, on June 6, 2005, that the federal government can continue arresting patients who use medical marijuana legally under their state laws.

And, noting that it is difficult to compare cannabis with products that have received regulatory approval under more rigorous experimental conditions than those previously conducted on cannabis, the HPC suggests that more and better clinical trials and studies would be needed.

According to the HPC, arguments against the medical use of cannabis include:

- When smoked, cannabis produces over 2,000 chemicals, including hydrogen cyanide, ammonia, carbon monoxide, acetaldehyde, acetone, phenol, cresol, naphthalene, and other well-known carcinogens.
- Smoking cannabis can lead to cancer of the lungs, mouth, lip and tongue.
- The National Institute of Allergy and Infectious Disease reported that the many carcinogens in cannabis smoke would be a health hazard for patients with compromised immune systems.
- The quality control of cannabis may be difficult to standardize and regulate.

The Human Services Department (HSD) notes that, since medical marijuana would not be dispensed by pharmacies, it is unlikely to become a Medicaid funded benefit.

ADMINISTRATIVE IMPLICATIONS

DOH would be responsible for implementing the Lynn Pierson Compassionate Use Program. According to DOH, it is anticipated, based on the experience of similar programs in other states, that program enrollment could be in the range of 50 to 200 patients.

DOH would also be responsible for registering individuals who would supply marijuana to qualified individuals enrolled in the program. By implication, DOH believes that it would be respon-

sible also for determining and regulating the safety and efficacy of the medical cannabis, and would also be involved in ensuring the security of the marijuana. DOH currently has neither the authority nor the capacity to approve substances provided by individuals for medicinal use, a function performed entirely by the U.S. Food and Drug Administration.

Finally, DOH suggests that the October 1, 2006 deadline for promulgation of rules by the DOH may not be realistic, given that this is a new program for which DOH lacks prior experience and expertise.

TECHNICAL ISSUES

SB 258 specifies that DOH would license producers of cannabis who are qualified to produce, possess, distribute, and dispense cannabis. The department asserts that the logistics of licensing marijuana production and intrastate distribution remain challenging in light of U.S. Supreme Court cases involving compassionate cannabis use. In *U.S. vs. Oakland Cannabis Buyers' Cooperative*, the Supreme Court ruled unanimously that the Oakland Buyers' Cooperative could not use a medical necessity argument as a defense against federal drug laws. DOH is concerned that the medical necessity argument in SB 258 might conflict with federal laws regarding cannabis. In addition, in *Gonzales vs. Raich*, the U.S. Supreme Court has ruled that the U.S. government has jurisdiction that supercedes state laws over the production and possession of marijuana. These two Supreme Court cases illustrate State versus Federal government jurisdiction issues that complicate production and use of cannabis. DOH concludes that it is a significant concern that State-sanctioned production of cannabis for the purposes of this program would be in direct violation of Federal controlled substances laws that prohibit the possession and production of marijuana under any circumstances.

OTHER SUBSTANTIVE ISSUES

The DOH proposes that, in order to prevent the misuse of medical marijuana, the Lynn Pierson Compassionate Use Act should assign to DOH appropriate oversight of the medical indications for the use of cannabis. Specifically, the department indicates that a DOH physician should have authority and responsibility to review applications from physicians for appropriateness of medical indications in individual cases. The medical advisory board established by the act should also have the authority to review the decisions made by the DOH physician administrator, so that physicians whose applications for their patients are not approved by the DOH physician administrator may appeal these decisions on a timely basis.

ALTERNATIVES

DOH suggests that a medical cannabis program that simply exempted program participants from state criminal liability would provide significant protection to individuals who chose to use cannabis to alleviate pain and suffering. According to DOH, this would be consistent with medical cannabis programs that are currently operative in other states. Although state medical cannabis program participants would still be subject to federal laws regarding production and possession of marijuana, it is not clear that the federal government would consider individuals with serious medical conditions to be priority targets for arrest and prosecution.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexicans with chronic, debilitating diseases and conditions will either go without the beneficial use of medical cannabis, or will self-medicate at the risk of prosecution.

AMENDMENTS

DOH proposes that SB 258 should be amended to remove the requirement, which is against federal law, that the state participate directly in the production and distribution of marijuana.

DOH also suggests that

- on page 2, paragraph B lines 13 and 18 (glaucoma and epilepsy) be deleted from the definition of “debilitating medical conditions”; and
- DOH be given more time to promulgate program rules and regulations to implement the act, by replacing “October 1, 2006” with “January 1, 2007” on Page 7, line 22.

ML/yr:nt